

YAVAPAI COUNTY ATTORNEY'S OFFICE  
JOSEPH C. BUTNER SBN 005229  
DEPUTY COUNTY ATTORNEY  
255 East Gurley Street  
Prescott, AZ 86301  
Telephone: 928-771-3344  
[ycao@co.yavapai.az.us](mailto:ycao@co.yavapai.az.us)

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*Stephanie Hicks*

IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No: P1300CR20081339

Division 6

STATE'S MEMORANDUM BRIEF RE:  
PROBABLE CAUSE FOR THE  
ALLEGED DEATH PENALTY  
AGGRAVATORS

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Memorandum Brief re: Probable Cause for the Alleged Death Penalty Aggravators.

MEMORANDUM OF POINTS AND AUTHORITIES

The State has alleged the following statutory aggravating circumstances according to A.R.S. § 13-703<sup>1</sup> and has presented evidence supporting probable cause for each aggravator at either grand jury or the *Chronis* Hearing<sup>2</sup>.

<sup>1</sup> Renumbered as A.R.S. § 13-751 effective January 1, 2009. All references in this pleading are to the statutes effective in 2008.

<sup>2</sup> *State v. Chronis*, 220 Ariz. 559, 208 P.3d 210 (2009)(a defendant has a right to a probable cause determination for alleged death penalty aggravators).

1           **A.     13-703(F)(2):**

2           Pursuant to A.R.S. § 13-703(F)(2), one of the factors considered “an aggravating  
3           circumstance in determining whether to impose a sentence of death” is where a “defendant  
4           has been or was previously convicted of a serious offense, whether preparatory or completed.  
5           Convictions for serious offenses committed on the same occasion as the homicide ... shall be  
6           treated as a serious offense under this paragraph. Pursuant to A.R.S. § 13-703(I)(9),  
7           Burglary in the First Degree is a serious offense.  
8

9           On October 31, 2008, the Yavapai County grand jury found probable cause to believe  
10          that Defendant committed Burglary in the First Degree; that is he entered and remained in  
11          Carol Kennedy’s residence located at 7485 Bridal Path, Prescott, AZ unlawfully with intent  
12          to kill Carol while he was armed with a deadly weapon or a dangerous instrument, to-wit: a  
13          golf club. The case was subsequently remanded for a new finding of probable cause and on  
14          February 5, 2009, a different grand jury again found probable cause to believe the same.  
15          Because the *Chronis* requirement regarding the (F)(2) aggravator was met at grand jury, the  
16          State asked the Court to take judicial notice of the grand jury’s findings.  
17

18           **B.     13-703(F)(5):**

19          “Under A.R.S. § 13-703(F)(5), a first degree murder is aggravated if the homicide  
20          was committed ‘as consideration for the receipt, or in the expectation of the receipt, of  
21          anything of pecuniary value.’” *State v. Martinez*, 218 Ariz. 421, 435, 189 P.3d 348, 435  
22          (2008). “Specifically, the state must prove that pecuniary gain was a ‘motive, cause or  
23          impetus for the murder and not merely the result.’” *State v. Canez*, 202 Ariz. 133, 159, 42  
24          P.3d 564, 590 (2002) (quoting *State v. Kayer*, 194 Ariz. 423, 433, 984 P.2d 31, 41 (1999));  
25          see also *Moormann v. Schriro*, 426 F.3d 1044, 1054 (9<sup>th</sup> Cir. 2005). “This proof may be  
26

1 either by ‘tangible evidence or strong circumstantial inference.’” *Canez* at 159, 42 P.3d 564,  
2 590 (quoting *State v. Hyde*, 186 Ariz. 252, 280, 921 P.2d 655, 683 (1996)). In this case,  
3 there is ample evidence that Carol’s murder was motivated by Defendant’s desire for  
4 pecuniary gain.

5         The State presented evidence that Defendant was a senior financial advisor who, in  
6 the months before the murder, had seen his compensation drop dramatically, nearly 30%,  
7 although his expenditures had not. The State presented evidence that Defendant was “upside  
8 down” in debt, could not meet his financial obligations and had no liquid assets other than his  
9 401K. The State demonstrated that in 2007 Defendant had a net cash shortage of \$170,000  
10 and a net cash shortage of over \$100,000 in the first six months of 2008. The State presented  
11 evidence that in early 2008, Defendant was forced to borrow \$50,000 from his family just to  
12 make ends meet. Simply stated, Defendant was living far beyond his means.

13  
14         The State also presented evidence that Carol had placed additional financial pressure  
15 upon Defendant in the weeks before her death. The State introduced evidence that Carol  
16 stated she was unable to find a lender willing to transfer the second mortgage on the Bridal  
17 Path residence into her name. Equally important is the fact that Carol did not have the  
18 financial resources to maintain the two mortgages on the property. As a result, Carol told her  
19 daughters that she was going to walk away from the property and allow it to go into  
20 foreclosure. With the real estate market conditions in free fall at that time, and because  
21 Defendant was still listed as a responsible party on the mortgages, he would have either been  
22 forced into a short-sale or foreclosure, either of which would have placed even more  
23 financial pressure on Defendant and would have caused additional damage to his already  
24 perilous financial condition.  
25  
26

1 More importantly, just hours before her death and in response to Defendant's request  
2 for his portion of the liquidation from the UBS 401K<sup>3</sup>, Carol placed even more financial  
3 pressure on Defendant. Defendant emailed Carol at 11:02 p.m. on July 1, 2008, demanding  
4 that Carol deliver to him \$8,683.68<sup>4</sup> and told her that without those funds, he could not pay  
5 her the \$6,000 spousal support payment for July. Carol emailed back insisting that  
6 Defendant would receive nothing from the 401K and that she was going to apply his portion  
7 of the significantly reduced overage<sup>5</sup> to the past due amount he owed on one of the credit  
8 cards<sup>6</sup>. Carol informed Defendant that he still owed her \$2,491.48 for the past due amount  
9 on the credit card in addition to the \$6,000 monthly spousal support and that she expected  
10 payment for both immediately.  
11

12 With Carol's death, Defendant escaped paying Carol the nearly \$8,500 he owed her at  
13 the time. With Carol's death, Defendant also escaped paying her an additional \$564,000 in  
14 spousal support payments. Additionally, if Defendant had not been suspected and eventually  
15 arrested for Carol's brutal murder, he, acting as an agent for his daughters, certainly would  
16 have had access and control over Carol's life insurance policies, which had a combined value  
17 of \$750,000.  
18  
19  
20  
21

22 <sup>3</sup> The Decree ordered that if the 401K QDRO was over \$180,000.00 the parties would evenly  
23 split the remainder.

24 <sup>4</sup> On May, 28, 2009, the value of the 401K was \$197,367.36; however the distributed amount  
25 was only \$186,667.31.

26 <sup>5</sup> Carol calculated the overage on the 401K after taxes would be \$3,867.04. Defendant's half  
was \$1,933.52.

<sup>6</sup> Prior to the final decree, Defendant was to keep current the payments to a Chase credit card.  
He failed to do so and on the date of the Decree, the Chase account had a past due amount of  
\$4,425.00

1 Defendant was broke and by his own admission could not afford to make the \$6,000  
2 spousal support payment which was due on July 1, 2008. He needed Carol to agree to terms  
3 as outlined in his July 1, 11:02 p.m. email. When she did not, Defendant brutally beat her to  
4 death. These facts demonstrate adequate probable cause to believe that Defendant murdered  
5 Carol for pecuniary gain. The State has satisfied the *Chronis* requirement for the (F)(5)  
6 aggravator.  
7

8 C. 13-703(F)(6):

9 “Under A.R.S. § 13-703(F)(6), a first degree murder is aggravated when ‘[t]he  
10 defendant committed the offense in an especially heinous, cruel or depraved manner.’” *State*  
11 *v. Martinez*, 218 Ariz. 421, 435, 189 P.3d 348, 362 (2008). The “heinous, cruel or depraved”  
12 aggravator is written in the disjunctive, and the State need prove only one of the three to  
13 trigger application of the aggravating circumstance. *Martinez* at 435, 189 P.3d at 362; *State*  
14 *v. Grell*, 212 Ariz. 516, 519, 135 P.3d 696, 698 (2006); *State v. Gretzler*, 135 Ariz. 42, 51,  
15 659 P.2d 1, 10 (1983).  
16

17 In *State v. Knapp*, 114 Ariz. 531, 543, 562 P.2d 704, 716 (1977), the Arizona  
18 Supreme Court set forth the following definition: “cruel: disposed to inflict pain esp. in a  
19 wanton, insensate or vindictive manner, sadistic.” Later, when the (F)(6) aggravator was  
20 challenged as unconstitutionally vague, the Arizona Supreme Court found that the following  
21 language contained sufficiently specific instruction regarding cruelty to foreclose the  
22 challenge:  
23

24 Cruelty goes to mental and physical anguish suffered by  
25 the victim. Mental anguish occurs when the victim experiences  
26 significant uncertainty about her fate. In order to constitute  
cruelty, conduct must occur before death and while victim is  
conscious. Conduct occurring after death or while a victim is  
unconscious does not constitute cruelty. Before conduct can be

1 found to be cruel, the State must prove that the defendant knew  
2 or should have known that the conduct would cause suffering  
to the victim.

3 *State v. Cromwell*, 211 Ariz. 181, 189, 119 P.3d 448, 456 (2005).

4 "Cruelty exists if the victim consciously experienced physical or mental pain prior to  
5 death and the defendant knew or should have known that suffering would occur. Mental  
6 anguish includes a victim's uncertainty about [his] ultimate fate." *State v. Bearup*, 221 Ariz.  
7 123, ¶ 48, 211 P.3d 684, 693 (2009) (citations omitted); *see also State v. Tucker* 215 Ariz.  
8 298, 160 P.3d 177 (2007). Only where there is no evidence that the victim suffered physical  
9 or mental pain or the evidence is inconclusive have Arizona courts held that cruelty was not  
10 shown. *Getzler* at 51, 659 P.2d at 10; *see also State v. Bishop*, 127 Ariz. 531, 534, 622 P.2d  
11 478, 481 (1981); *State v. Ceja*, 126 Ariz. 35, 39, 612 P.2d 491, 495 (1980); *State v. Ortiz*,  
12 131 Ariz. 195, 210, 639 P.2d 1020, 1035 (1977).

13  
14  
15 Former Yavapai County Medical Examiner Dr. Keen testified that Carol had multiple  
16 blunt force injuries and that her death was caused independently or in aggregate by any of the  
17 seven depressed fractures to her skull. Dr. Keen testified that Carol would have seen her  
18 attacker. Dr. Keen stated that the injuries to Carol's right forearm were consistent with  
19 defensive wounds. The two defensive-type injuries to Carol's forearm were rod-like in shape  
20 and consistent with the shaft of a golf club. Dr. Keen testified that the rod-like injuries to the  
21 right forearm in addition to an expanded bruising on Carol's right triceps area which was  
22 about the dimension and shape of a golf club head led him to believe those injuries were  
23 caused by a golf club. Dr. Keen stated that he did not believe the injuries to the forearm and  
24 triceps were inflicted after Carol was unconscious because, based upon his experience, it is  
25 highly unlikely that the arm of an unconscious person would remain flexed in the manner  
26

1 Carol's was at the time of the injury. Dr. Keen stated that the defensive injuries would have  
2 been extremely painful and would have caused mental anguish and suffering due to the  
3 viciousness of the attack. One can clearly envision the horror, fear and anguish Carol  
4 experienced when Defendant, the person with whom Carol had spent the majority of her  
5 adult life, began beating her mercilessly with a golf club.

6  
7 Dr. Keen believed Carol had been struck in the face at least twice and that these  
8 blows were non-fatal and delivered before Carol's death. Carol's nose had been broken, both  
9 of her eyes were blackened, she had been struck in the mouth, and had abrasions to her lower  
10 right chin. Dr. Keen testified there were complex fractures to the facial bones and that the  
11 fracture to the nose caused some of the facial bones to become dislodged from the base of the  
12 front of the skull. In addition, there was a severe laceration to the left side of Carol's  
13 forehead. Dr. Keen stated that the laceration could have been caused by forceful contact with  
14 the corner of the desk in the room where Carol was found<sup>7</sup>. Dr. Keen opined that Carol was  
15 conscious and alert for at least three of the blows to her head and face. Dr. Keen also  
16 testified that any reasonable person would have known that the blows caused significant pain  
17 and suffering.  
18

19 Dr. Keen stated that in addition to the facial injuries, Carol had at least 8 distinct  
20 injuries to both sides, the top, and the back of her skull. Many of these were comminuted  
21 fractures, that is fractures that have complexity in the way they fracture. Dr. Keen compared  
22 a comminuted fracture to the effect on a boiled egg when it is dropped – there is a shattered  
23 appearance rather than a straight-line cut. Seven were also depressed fractures, meaning the  
24  
25  
26

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<sup>7</sup> Photographs of the crime scene showed that the corner of the desk was covered in blood.

1 bone invaded the brain tissue. Dr. Keen testified that at least two of the fractures had a  
2 curved nature which was consistent with the head of a golf club.

3 Dr. Keen testified he believed Carol was beaten from all sides. Dr. Keen stated that  
4 because the laceration to the scalp and fractures to the skull were so severe, the blows  
5 causing them had to be both violent and vicious. Dr. Keen testified that unlike in most  
6 autopsies he performed he did not have to use a saw to open the cranial vault because Carol's  
7 skull was already shattered into so many pieces. Dr. Keen stated that once the brain was  
8 removed, he noted numerous fractures to the base of the skull which was yet another  
9 indication of the severity of the impacts. Dr. Keen testified that very massive blows from  
10 above are needed to fracture the base of the skull. Clearly, the State has offered significant  
11 evidence that Carol was murdered in an especially cruel manner. She saw her attacker, had  
12 defensive wounds, and received at least two vicious and violent blows to her face and head  
13 before she lost consciousness. The *Chronis* requirement for cruelty has been met.  
14

15 A "factor we have found to demonstrate a heinous or depraved state of mind is the  
16 infliction of gratuitous violence on the victim." *State v. Gretzler*, 135 Ariz. 42, 51, 659 P.2d  
17 1, 10 (1983).  
18

19 We think that defendant's conduct in continuing his barrage of  
20 violence, inflicting wounds and abusing his victims, beyond the  
21 point necessary to fulfill his plan to steal, beyond even the  
22 point necessary to kill, is such an additional circumstance of a  
23 \* \* \* depraved nature so as to set it apart from the "usual or the  
24 norm." 126 Ariz. at 40, 612 P.2d at 496, quoting *State v. Ceja*,  
25 supra, 115 Ariz. at 417, 565 P.2d at 1278.

26 *Gretzler*, at 42, 51, 659 P.2d 1, 10 (1983).

Gratuitous violence "may be demonstrated by the continued infliction of violence  
after the defendant knew or should have known that a fatal action had occurred." *State v.*

1 *Bearup*, 221 Ariz. 163, ¶ 52, 211 P.3d 684, 694 (2009). In *State v. Hyde*, 186 Ariz. 252, 281,  
2 921 P.2d 655, 684 (1996), the defendant beat his victim on the head with a Bowie knife until  
3 the bone was visible and the victim was bleeding profusely. The Arizona Supreme Court  
4 held "that defendant's repetitive bludgeoning of both victims was an act of gratuitous  
5 violence."

6  
7 The bludgeoning continued after both victims were dead with  
8 their skulls shattered from the force of the repeated blows. ...  
9 In both cases, the blows were delivered with sufficient force  
10 not only to shatter the bone but to cut and tear the brain tissue  
11 by forcing the bone fragments into it.

12 *Id.*

13 The injuries to the victims in *Hyde* are markedly similar to Carol's. Dr. Keen  
14 testified that any of the blows which caused bone to be depressed into the brain could have  
15 caused unconsciousness and death and that one was probably delivered relatively early in the  
16 attack. Carol's scalp was visibly laid open such that the bones of the skull were exposed in  
17 many of the photos taken at the scene. Dr. Keen testified that he could not determine the  
18 order in which the blows were delivered. Dr. Keen also testified that because any of the  
19 depressed fractures could have caused Carol to lose consciousness, Carol's attacker  
20 continued to beat her after she became defenseless.

21 There is evidence that after killing Carol, Defendant staged the room to make it  
22 appear as though she had died as the result of a fall. A ladder was placed in front of the door  
23 just inches from where Carol was found. When Carol's body was first moved by law  
24 enforcement, a large pool of blood was found underneath her stomach, although Carol had no  
25 injuries to that part of her body. This gives reason to believe that Carol's head first hit the  
26 floor at that location. There was a severe laceration on Carol's forehead which was  
consistent with a blow from a sharp surface such as the corner of the desk. The corner of the

1 desk was covered in Carol's blood. A portion of the corner of the desk had broken off and  
2 was found under Carol's head. There is reason to believe that the blow was delivered after  
3 Carol was unconscious, when Defendant purposefully smashed Carol's head into the desk to  
4 support the accidental fall scenario.

5 The State has satisfied the *Chronis* requirement by demonstrating there is probable  
6 cause to believe that Defendant inflicted wounds and abused Carol far beyond the point  
7 necessary to kill. The repeated vicious, violent blows to Carol's head with a golf club, many  
8 of which were delivered after she was unconscious, and the deliberate smashing of Carol's  
9 face and head into the corner of the desk in an attempt to make it appear that Carol has died  
10 as a result of an accident show that Defendant committed this murder in an especially  
11 depraved manner.  
12

13 **D. 13-703(F)(12):**  
14

15 In 2005, A.R.S. § 13-703(F) was amended to include three additional aggravating  
16 circumstances for the trier of fact to consider in determining whether to impose a sentence of  
17 death. Included was whether a "defendant committed the offense to prevent person's  
18 cooperation with an official law enforcement investigation, to prevent a person's testimony in a  
19 court proceeding, in retaliation for a person's cooperation with an official law enforcement  
20 investigation or in retaliation for a person's testimony in a court proceeding." A.R.S. § 13-  
21 703(F)(12). Prior to the enactment of (F)(12), an allegation that a defendant killed a witness to  
22 prevent or in retaliation for a person's cooperation or testimony was typically a factor given  
23 some weight in proving the (F)(6) aggravator. Although there is no Arizona case law which  
24 examines the (F)(12) aggravator, we do have benefit of cases prior to the enactment of (F)(12)  
25 which define the standard of proof required to show witness elimination was a motive.  
26

1 In *State v. Ross*, 180 Ariz. 598, 886 P.2d 1354 (1994), the Arizona Supreme Court  
2 stated:

3 The evidence supporting a finding of witness elimination  
4 has, under our cases, taken one of three forms. ***First is where***  
5 ***the murder victim is the witness to some other crime, and is***  
6 ***killed to prevent that person from testifying about the other***  
7 ***crime.*** A second kind of evidence of witness elimination is a  
8 statement by the defendant that witness elimination is a motive  
for the murder. The final kind of evidence is where  
extraordinary circumstances of the crime show, beyond a  
reasonable doubt, that witness elimination is a motive.

9 *Id* at 606, 886 P.2d at 1362 (emphasis added).

10 The State presented evidence that Defendant submitted false financial information to  
11 the court during divorce proceedings and submitted the same false information to the Internal  
12 Revenue Service when he filed his 2007 tax return. The State's financial forensic expert,  
13 Richard Echols, testified that Defendant inflated his expenses and undervalued his assets on  
14 his Amended Financial Affidavit provided to the divorce court on February 1, 2008. Mr.  
15 Echols testified that Defendant used the same inaccurate figures when he filed his 2007  
16 income tax return. The State presented evidence that Carol planned on taking Defendant  
17 back to court regarding the divorce decree to get some of the inequities resolved. Carol's  
18 own tax return, which had not yet been filed when she was murdered, would have contained  
19 figures which contradicted those on Defendant's return. Upon filing of Carol's return,  
20 Defendant's own tax return would have been automatically subjected to scrutiny by the IRS.  
21 Furthermore, Carol had threatened to report Defendant to the IRS for filing a fraudulent  
22 income tax return. Conviction on either lying to the court or tax fraud would have cost  
23 Defendant his stock trader's license and his ability to work as a financial advisor.  
24  
25  
26

1 These facts establish probable cause to believe that one of Defendant's motives for  
2 killing Carol was to prevent her from revealing his lies to both the divorce court and to the  
3 IRS. The State has met the *Chronis* requirement for the (F)(12) aggravator.

4 **E. 13-703(F)(13):**

5 As with the (F)(12) aggravator, (F)(13) was added as a statutory aggravator in 2005 and  
6 provides that a trier of fact can consider whether a murder "was committed in a cold, calculated  
7 manner without pretense of moral or legal justification." Throughout the various hearings in  
8 this case, the Court has received sufficient circumstantial evidence to believe that Defendant  
9 ambushed Carol. A carefully prearranged plan to commit premeditated murder is committed in  
10 a cold and calculated manner. *Smith v. Florida*, 7 So.3d 473, 491 (2009).

12 Defendant was well aware of Carol's habit of running near her home after work most  
13 evenings. Defendant knew Carol would be home alone that evening since their daughter Katie  
14 had just recently left the country. More importantly, Carol had sent a text message to  
15 Defendant the afternoon of July 2, 2008, stating he could come out that evening to pick up  
16 Katie's car. Defendant said nothing of this plan to either his daughter Charlotte or Charlotte's  
17 boyfriend Jacob. There is evidence that Defendant entered the home from the ranch land  
18 directly behind the home, after he stashed his bicycle in the brush, while Carol was out on  
19 her evening run and, once in the house, laid in wait for her to return. Defendant also knew  
20 there was a golf club at the residence because he had left it there for Carol's upcoming garage  
21 sale. Dr. Keen testified that Carol's injuries were consistent with those that could be caused by  
22 a golf club.

25 The staging of the scene is another indication of the cold, calculated manner in which  
26 Carol's murder was carried out. As stated in the (F)(6) portion of this pleading, there is reason

1 to believe the laceration on Carol's forehead was delivered after Carol was unconscious,  
2 when Defendant purposefully smashed her head into the desk to support the accidental fall  
3 scenario. These facts establish probable cause to believe Defendant committed Carol's murder  
4 in a cold, calculated manner.

5 **CONCLUSION:**

6  
7 The grand jury found probable cause to believe Defendant committed Burglary in the  
8 First Degree in order to kill Carol. At the *Chronis* Hearing, the State presented sufficient  
9 evidence to demonstrate probable cause to believe Defendant brutally murdered Carol for  
10 pecuniary gain and to prevent her from reopening the divorce case and turning him in to the  
11 IRS. The State also presented sufficient evidence that the murder was committed in a cruel  
12 and depraved manner as well as a cold, calculated manner without pretense of moral or legal  
13 justification.  
14

15  
16 RESPECTFULLY SUBMITTED this 12<sup>th</sup> November, 2009.

17  
18 Sheila Sullivan Poole  
YAVAPAI COUNTY ATTORNEY

19  
20 By: 

21 Joseph C. Butner  
22 Deputy County Attorney

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24 ///

25 ///

26 ///

Office of the Yavapai County Attorney

255 E. Gurley Street, Suite 300

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

1 ///

2  
3 COPIES of the foregoing delivered this  
4 12<sup>th</sup> day of November, 2009 to:

5 Honorable Thomas J. Lindberg  
6 Division 6  
7 Yavapai County Superior Court  
8 (via email)

9 John Sears  
10 107 North Cortez Street, Suite 104  
11 Prescott, AZ 86301  
12 Attorney for Defendant  
13 (via email)

14 Larry Hammond  
15 Anne Chapman  
16 Osborn Maledon, P.A.  
17 2929 North Central Ave, 21<sup>st</sup> Floor  
18 Phoenix, AZ  
19 Attorney for Defendant  
20 (via email)

21 By: \_\_\_\_\_  
22  
23  
24  
25  
26